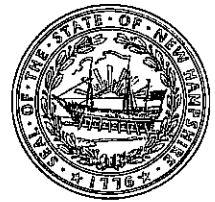




The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



**Thomas S. Burack, Commissioner**

February 19, 2009

The Honorable Martha Fuller Clark, Chairman  
Energy, Environment and Economic Development Committee  
Legislative Office Building, Room 102  
Concord, New Hampshire 03301

**Re: SB 139-FN, establishing a moratorium on the Comprehensive Shoreland Protection Act and a study commission to recommend changes to the Act.**

Dear Chairman Fuller Clark:

Thank you for this opportunity to comment on SB 139, which would halt the implementation of RSA 483-B, the Comprehensive Shoreland Protection Act (the CSPA) for a period of one year. The proposed moratorium would include discontinuing the review of applications currently required for construction, excavation, and fill within shorelands protected by the CSPA, as well as enforcement of the CSPA. SB 139 further proposes to establish a commission to study the CSPA and recommend revisions. The Department of Environmental Services (DES) opposes this legislation for the reasons stated below.

If enacted, SB 139-FN would constitute an unprecedented step backwards for environmental protection in New Hampshire. A moratorium on the enforcement of the Shoreland Protection standards would effectively remove established legal protections for critical surface waters of the state that are intended to prevent erosion, reduce flooding, and protect water quality. DES respectfully submits that there is no substantial policy justification for stripping, even temporarily, the environmental protections afforded by RSA 483-B from the State's lakes, rivers and shorelands.

A moratorium would also create regulatory chaos that is patently contrary to the public interest. The proposed moratorium would create a one-year period in which illegal structures could be constructed and other activities performed without state regulation that would require future enforcement action by DES. In other words, after a one year moratorium, we believe that DES would be obligated to initiate enforcement under RSA 483-B against egregious violations of the CSPA that occurred during the moratorium and develop some form of an "after the fact" permit process to address a backlog of legal projects constructed during the moratorium. This would create a very confusing situation for DES, municipalities, property owners and contractors.

SB 139 also fails to make any provision for funding DES staff who have been hired and trained to implement the Shoreland Protection Program based on an assumed revenue stream from permit application fees. In 2007, six positions were created by the Legislature and two other pre-existing positions were transferred from the General Fund to the dedicated Shoreland and Wetlands Fee account. Currently, due to the slow economy, only three of these positions are

DES Web site: [www.des.nh.gov](http://www.des.nh.gov)

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-3503 • Fax: (603) 271-2867 • TDD Access: Relay NH 1-800-735-2964


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filled. Nonetheless, these positions are all currently funded through application fees that would not exist if a moratorium on applications were to be implemented.

Finally, please note that the CSPA in its current form was the product of a 24 member study commission convened from September 2005 through November 2006. This commission included representatives of the same stakeholder groups identified in this legislation, as well as other groups not included in SB 139. The final report of this commission, as filed with both the Senate and House of Representatives, formed the basis for revisions to the CSPA that occurred last year. DES believes that the people and environment of NH would be better served by continuing to implement the changes recently put in place and moving forward with cooperative improvements such as those outlined in SB 134, which you have also heard today.

DES urges the Committee not to act favorably on SB 139-FN. Please feel free to call me at 271-2958, or Rene Pelletier at 271-2951, if you have any questions or need additional information about the agency's position.

Very truly yours,

  
Thomas S. Burack  
Commissioner

cc: Senators Gallus, Denley, Letourneau and Gatsas  
Representatives Ingersoll and Sapareto